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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 KEVIN MODA,

12 Plaintiff,

13 v.

14 LAW OFFICES OF ROBERT C.
ARONOFF, et al.,

15 Defendants.
16

Case No. CV 16-0545 FMO (Ex)

**FINDINGS OF FACT and CONCLUSIONS
OF LAW**

17 **INTRODUCTION**

18 On January 25, 2016, Kevin Moda (“plaintiff” or “Moda”) filed this action against the Law
19 Offices of Robert C. Aronoff, a Professional Corporation (“Aronoff Law”) and Robert C. Aronoff
20 (“Aronoff”) (collectively, “defendants”), alleging that defendants violated the Fair Debt Collection
21 Practices Act (“FDCPA”), 15 U.S.C. §§ 1692, et seq. (See Dkt. 1, Complaint). Specifically,
22 plaintiff alleges that defendants sent him a letter demanding payment for past-due rent which
23 violated the FDCPA because he did not owe back-rent, and the letter failed to conform to the
24 requirements set forth in the FDCPA. (See id. at ¶¶ 4-7, 15-17, 20-35).

25 A bench trial was held and the court, having heard live testimony and duly considered the
26 evidence, the credibility of the witnesses, the entire file, and the contentions and arguments of
27 counsel, hereby makes the following findings of fact and conclusions of law in accordance with
28 Rule 52(a) of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. On January 18, 2016, plaintiff was living at 2170 Century Park East, Apartment 1606, Los Angeles, California ("Apartment"). (Dkt. 105, Pretrial Conference Order ("PTO") at ¶ 5.A.).

2. An undated cover letter purporting to be from Mordecai Notis ("Notis") of L & M Construction, Inc. regarding the rental of the Apartment stated that Notis "would like to lease the [Apartment] as part of a compensation package for a key employee" and that "Notis Enterprises is ready, willing and able to enter into an immediate lease and immediately occupy" the Apartment. (Dkt. 138, Reporter's Transcript ("RT") at 24; Exh. 16 ("Lease") at 121¹).

3. The Residential Lease for the Apartment identifies "Notis Enterprises, Kevin Moda" as the "Tenant" and contains the apparent signatures of Notis and Moda. (Exh. 16 at 122, 127; Dkt. 138, RT at 24-25, 49-51). Notis is identified as the guarantor. (Exh. 16 at 127).

4. The Lease states that "[t]he Premises are for the sole use as a personal residence by the following named person(s) only: Kevin Moda." (Exh. 16 at 122).

5. The Apartment was plaintiff's sole residence. (Dkt. 105, PTO at ¶ 5.B.).

6. Some of the monthly rent for the Apartment was paid using checks issued by various entities created by plaintiff, and other individuals, including his trial counsel. (Exh. 17; Dkt. 138, RT at 39-46). Although the monthly rent was paid by checks issued by various entities and individuals, plaintiff testified that the money was his own income because the checks came from his own companies, and with respect to checks from his counsel and other individuals, they owed him money and he simply directed them to pay his rent directly. (Dkt. 138, RT at 46, 57).

7. On January 18, 2016, defendants mailed and emailed a letter to plaintiff. (Dkt. 105, PTO at ¶ 5.C.; Dkt. 84, Trial Declaration of Kevin Moda ("Moda Decl.") at ¶ 2; Dkt. 138, RT at 73); Exh. 4 ("January 18 Letter")). The letter, which was addressed to plaintiff and Notis of Notis Enterprises, (see Exh. 4 at 28; Dkt. 138, RT at 83), stated:

¹ Page citations to exhibits are to the "Trial Exhibits" number located on the lower left-hand side of the page.

1 This firm represents Brivanlou Pacoima LLC, the successor of Harold Igdaloff
2 the trustee of the 1993 Igdaloff Family which rented the referenced
3 premisses to you beginning February 1, 2013. Mahin Hakak, the managing
4 member of Brivanlou Pacoima, LLC informs me that as of this date, you are
5 4 months behind in your rent payments. Please refer to the attached ledger.
6

7 I am writing this letter as a courtesy to give you the opportunity to pay the
8 outstanding amount in full without the inconvenience and legal expense of
9 litigation. [¶] The amount due is \$15,600, plus late fees of \$1,560.00. If the
10 \$15,600.00 is paid before 5:00 pm on January 22, 2016, the late fees will be
11 waived. If not, I have been authorized to begin legal proceedings to evict you
12 from the premisses and collect the amount due, including late fees, attorney
13 fees and court costs.
14

15 If you have proof of any payments other than as shown on the ledger, please
16 provide them with your payment of the balance of the amount due.
17

18 Please understand, this is not the first in a series of collection letters. If the
19 amount is not paid by 5:00 pm on January 22, 2016, we will proceed with the
20 myriad of legal remedies available to my client.

21 (Exh. 4 at 28-30).

22 8. The January 18 Letter was signed by Aronoff. (Exh. 4 at 29).

23 9. The January 18 Letter was the first communication between plaintiff and the defendants.
24 (Dkt. 105, PTO at ¶ 5.D.; Dkt. 138, RT at 28). Prior to receiving the January 18 Letter, plaintiff had
25 never heard of or dealt with defendants. (Dkt. 84, Moda Decl. at ¶ 3).

26 10. On January 19, 2016, plaintiff responded to the January 18 Letter. (Dkt. 105, PTO at
27 ¶ 5.E; Dkt. 84, Moda Decl. at ¶¶ 8, 12; Exh. 5 ("January 19 Letter")).
28

1 11. Plaintiff's January 19 Letter stated, among other things, that "Notis Enterprises has not
2 paid, nor have I been its employee since early 2014. I do not know why it and its principal were
3 carbon copied on the collection letter re rents for 2015, in Jan 2016." (Exh. 5 at 32). It added that,
4 "as to the rents: [plaintiff's] occupancy of the premises does not include the labor associated with
5 accounting for Ms. Hakak. I have graciously provided evidence of payments of rents twice already
6 and will not subject myself to further inquiry on the issue." (Id.).

7 12. In the January 19 Letter, plaintiff stated that two weeks earlier, he had "received a call
8 from Ms. Hakak advising [him] that she had not received the rent for Jan 2016 and based on the
9 assertion of Ms. Hakak, [plaintiff] caused to be issued a second check with the notation that it was
10 a duplicate payment[.]" (Exh. 5 at 33). Plaintiff accused Ms. Hakak of having cashed the check
11 in December 2015, and crossing out the notation in the memo line that indicated the payment was
12 for January 2016 to instead reflect that it was payment for December 2015. (See id.). Plaintiff
13 stated: "I wish to impress upon you that my then calm instead of vitriol emitted from the fact that
14 I was dealing with matters of far important significance to me. However, in light of your letter and
15 meritless position, I insist that the gravity of your client's conduct be taken into consideration
16 before you step further." (Id.).

17 13. Plaintiff added: "In sum, I do not wish for you to wait till January 22, 2016, to come to
18 a date for action. If Ms. Hakak brings an action premised on an allegation of my failure to pay
19 rents, I'd just assume that she have the data to back up the assertion or risk incurring / becoming
20 liable for the defense of the action and most likely, the malicious prosecution liability that will
21 follow." (Exh. 5 at 34).

22 14. On January 20, 2016, Aronoff responded to plaintiff's January 19, 2016, Letter via
23 email. (See Dkt. 105, PTO at ¶ 5.F.; Exh. 6 ("January 20 Email")).

24 15. The January 20 Email stated, among other things, that plaintiff was "4 months behind
25 in [his] rent" and that unless Aronoff was "provided with evidence (preferably cancelled checks)
26 showing additional payments, [Aronoff] w[ould] proceed to take legal action to evict [plaintiff] and
27 collect the unpaid rent." (Exh. 6 at 38). Aronoff stated: "While you may feel that you have
28 previously evidence of payments to Ms. Hakak you are going to have to provide it to me. This can

1 be done in response to this email, or after you have expend[ed] considerable funds and time to
2 have the Court order it. I will remind you that the Lease obligates you to pay Ms. Hakak's legal
3 fees. Therefore her offer to waive late charges and the savings in legal fees should make it worth
4 your while to provide proof of your payment of rent now, rather than later." (Id.).

5 16. On January 20, 2016, plaintiff responded to Aronoff's email of the same date. (Exh.
6 7). Among other things, plaintiff stated that he was current in his rent, (see id. at 40-41), and that
7 "Notis [was] being sued for not honoring his obligations." (Id. at 40). Plaintiff offered to provide
8 an accounting in exchange for one month of free rent. (Id. at 41). Plaintiff added: "I don't shy
9 away from litigation and welcome it instead." (Id.; Dkt. 138, RT at 13).

10 17. Subsequently, unlawful detainer actions were filed in state court. (Dkt. 84, Moda Decl.
11 at ¶ 21; Dkt. 138, RT at 15-19, 21, 58). Plaintiff was ordered to vacate the Apartment. (Dkt. 138,
12 RT at 20).

13 18. At some point, Aronoff learned that the amount of back rent stated in the January 18
14 Letter was not accurate. (See Dkt. 138, RT at 70-72). Rather than four months of unpaid rent,
15 there was only one month. (See id. at 72) ("I'm 100 percent sure now that he [plaintiff] was one
16 month behind in January. . . . [H]e was not four months behind.").

17 19. In January 2016, defendants maintained a website that stated, among other things, that
18 Aronoff Law handles "all aspects of a Civil Litigation practice," including "Unlawful Detainer" and
19 the "Enforcement of Judgments (debt collection)." (Exh. 15 at 103; see also RT at 77-78). The
20 website included 46 types of cases including "Civil Litigation," "Real Estate," and "Bankruptcy and
21 Creditors' Rights." (Exh. 15 at 103-04; Dkt. 87, Trial Declaration of Robert C. Aronoff ("Aronoff
22 Decl.") at ¶ 13). Since this action was filed, the "Enforcement of Judgments (debt collection)"
23 language has been removed from the website. (Dkt. 138, RT at 78).

24 20. Over 50% of the fees earned by Aronoff Law (excluding fees relating to the current
25 litigation) over the past two years have come from transactional work. (Dkt. 87, Aronoff Decl. at
26 ¶ 9).

27 21. Over the last four years, defendants have been retained to collect only one unpaid
28 judgment, which related to a judgment in favor of Aronoff's uncle, Harold Igdaloff ("Igdaloff"), for

1 attorney's fees and costs. (Dkt. 87, Aronoff Decl. at ¶ 10; Dkt. 138, RT at 80).

2 22. Defendants have experience in unlawful detainer matters, but only in connection with
3 corporations. (Dkt. 138, RT at 97). They file two or three unlawful detainer cases a year, which
4 typically involve commercial leases and properties with commercial tenants. (Dkt. 87, Aronoff
5 Decl. at ¶ 18).

6 23. Other than the matter involving plaintiff, the only debt collection cases Aronoff has
7 handled have been on behalf of the debtor. (Dkt. 138, RT at 78; see also Dkt. 87, Aronoff Decl.
8 at ¶ 9).

9 24. If defendants are asked to do a residential unlawful detainer, Aronoff will generally refer
10 it to an outside firm that specializes in residential evictions. (Dkt. 87, Aronoff Decl. at ¶ 18; see
11 Dkt. 138, RT at 97-98) (If someone called Aronoff with a dispute involving a delinquent client
12 relating to an apartment building, Aronoff would tell them to call "H&R Block" because such "mills
13 can get . . . people out a lot cheaper than [he] can."). Aronoff does not "evict people from
14 apartments." (Dkt. 138, RT at 98).

15 25. Aronoff accepted plaintiff's case because the tenant, as reflected in the Lease and
16 cover letter, was a company – Notis Enterprises. (Dkt. 87, Aronoff Decl. at ¶ 19). In addition to
17 the Lease and cover letter, the rent was paid by various entities, including: Silver Lake Real
18 Estate, LLC; GFYS, LLC; JKDM, LLC; and The Law Offices of Payam Taheri. (Id. at ¶ 19; Dkt.
19 138, RT at 39-46; Exh. 17). Another reason Aronoff undertook this matter is because Igdaloff
20 referred him to Brivanlou Pacoima, LLC, which is managed by Hakak, who is an "elderly friend of
21 his." (Dkt. 138, RT at 80-81). Igdaloff asked Aronoff whether he could "take care" of the "problem"
22 "Mahin is having" with plaintiff. (Id. at 82). After Aronoff learned that Moda was the sole resident
23 of the Apartment, he continued with the matter because he "had already taken on the case." (Id.
24 at 98). The court finds Aronoff credible on this point.

25 26. Defendants have no regular employees and employ only a part-time assistant who is
26 mostly engaged in real estate matters, and performing some office work. (Dkt. 87, Aronoff Decl.
27 at ¶ 17).

28 27. Defendants do not have any system or contractors to do debt collection work. (Dkt.

87, Aronoff Decl. at ¶ 17).

28. Any finding of fact that more correctly constitutes a conclusion of law should be treated as such.

CONCLUSIONS OF LAW

29. “Congress enacted the FDCPA in 1977 . . . to eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573, 577, 130 S.Ct. 1605, 1608 (2010) (citing 15 U.S.C. § 1692(e)).

30. “There are four elements to an FDCPA cause of action: (1) the plaintiff is a ‘consumer’ under 15 U.S.C. § 1692a(3); (2) the debt arises out of a [consumer] transaction entered into for personal purposes; (3) the defendant is a ‘debt collector’ under 15 U.S.C. § 1692a(6); and (4) the defendant violated one of the provisions contained in 15 U.S.C. §§ 1692a-1692o.” Wheeler v. Premiere Credit of North America, LLC, 80 F.Supp.3d 1108, 1112 (S.D. Cal. 2015); Warwick v. Bank of New York Mellon, 2016 WL 2997166, *16 (C.D. Cal. 2016). “The plaintiff in an FDCPA action bears the burden of proving the defendant’s debt collector status.”² Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti, 374 F.3d 56, 60 (2nd Cir. 2004).

31. A “debt collector” under the FDCPA is (1) “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts,” or (2) “who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6); Schlegel, 720 F.3d at 1208.

32. A “debt” under the FDCPA is “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are

² Because the court finds that plaintiff failed to meet his burden of proving that defendants are debt collectors as defined by the FDCPA, the court only addresses that element. Cf. Schlegel v. Wells Fargo Bank, NA, 720 F.3d 1204, 1208-10 (9th Cir. 2013) (affirming dismissal of complaint because plaintiffs failed to sufficiently plead defendant was a debt collector as defined by the FDCPA).

1 the subject of the transaction are primarily for personal, family, or household purposes[.]” 15
2 U.S.C. § 1692a(5). As defined, the FDCPA “limits ‘debt’ to consumer debt, i.e., debts ‘arising out
3 of . . . transaction[s]’ that ‘are primarily for personal, family, or household purposes.’” Heintz v.
4 Jenkins, 514 U.S. 291, 293, 115 S.Ct. 1489, 1490 (1995) (quoting 15 U.S.C. § 1692a(5)).

5 33. The first definition of debt collector requires that the “principal purpose of [defendants’]
6 business is debt collection.” Schlegel, 720 F.3d at 1209; 15 U.S.C. § 1692a(6). Plaintiff failed to
7 proffer evidence that the principal purpose of defendants’ law practice is consumer debt collection.
8 In addition, defendants put forth un rebutted evidence that their unlawful detainer practice involves
9 corporations (Dkt. 138, RT at 97), and even then, defendants typically only file two to three
10 unlawful detainer cases a year. (Dkt. 87, Aronoff Decl. at ¶ 18). Moreover, over the last four
11 years defendants have been engaged to collect only one unpaid judgment. (Id. at ¶ 10); see, e.g.,
12 Turner v. Cook, 362 F.3d 1219, 1228 (9th Cir.), cert. denied, 543 U.S. 987 (2004) (holding that
13 judgment debt was a result of a tort and therefore not a debt within the meaning of the FDCPA).
14 Further, defendants have no regular employees and employ only a part-time assistant who is
15 mostly engaged in real estate matters, and handling office work. (Dkt. 87, Aronoff Decl. at ¶ 17).
16 Finally, defendants do not have any system or contractors to do debt collection work. (Id.). In
17 short, there is no evidence that the principal purpose of Aronoff Law is the collection of consumer
18 debt. See Schlegel, 720 F.3d at 1209 (Establishing only that “some part” of defendants’ business
19 is debt collection is not sufficient to prove a claim under the FDCPA.).

20 34. The second definition of debt collector requires that defendants “regularly collect[] or
21 attempt[] to collect” debts owed to another. Schlegel, 720 F.3d at 1209; 15 U.S.C. § 1692a(6).
22 The FDCPA “applies to attorneys who ‘regularly’ engage in consumer-debt-collection activity, even
23 when that activity consists of litigation.” Heintz, 514 U.S. at 299, 115 S.Ct. at 1493; McCollough
24 v. Johnson, Rodenburg & Lauinger, LLC, 637 F.3d 939, 948 (9th Cir. 2011).

25 35. Again, plaintiff has failed to carry his burden of showing that defendants regularly
26 collect or attempt to collect debts owed to others. In addition, defendants have established that
27 they do not regularly engage in consumer debt activity. (See Dkt. 138, RT at 97; Dkt. 87, Aronoff
28 Decl. at ¶¶ 10, 18); see also Duke v. Nachtigal, 2012 WL 195466, *5 (D. Or. 2012) (granting

1 summary judgment to defendants – an attorney and law firm – on FDCPA claim because they did
2 not conduct debt collection activities with sufficient regularity to come within the scope of the
3 FDCPA since during the relevant time period, their debt collection activities constituted at most
4 3.2 percent of their work; they did not have any staff solely dedicated to collection activities; they
5 did not appear to have any consumer credit clients; and the attorney only issued six writs of
6 garnishment per year).

7 36. Any conclusion of law that more correctly constitutes a finding of fact should be treated
8 as such.³

9 **CONCLUSION**

10 Based on the foregoing, IT IS ORDERED THAT plaintiff's action is dismissed with
11 prejudice. Judgment shall be entered accordingly.

12 Dated this 27th day of September, 2017.

13
14 /s/
15 Fernando M. Olguin
16 United States District Judge
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27 _____
28 ³ It is unnecessary to address defendants' waiver defense.